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IN THE
COURT OF APPEALS OF INDIANA

GENE NICHOLS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 67A03-0703-CV-136
	)	
IN RE THE MATTER OF	)	
THE ESTATE OF:	)	
JAMES ROBERT NICHOLS,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew Headley, Judge
Cause No. 67C01-0604-ES-22

OCTOBER 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

James Robert Nichols and his wife, AnnaBelle Nichols, owned a farm upon which they raised a breed of quarter horses that they developed. They had three children, Larry, Gene and Judy, who were all adults at time of this litigation. Gene lived on a portion of the property, assisted in the quarter horse operation and helped care for his parents.

James Robert died September 15, 2004. His will dated November 4, 1988, was probated and his estate was opened in April, 2006. The will left his entire estate to his wife AnnaBelle, who survived him. AnnaBelle is now under guardianship.

In going through some of his mother's papers in the summer of 2006 Gene discovered a paper bearing the handwritten signatures James R. Nichols and AnnaBelle J. Nichols and the date, 9-18-2000. It read as follows:

> Rental Contract for MAPLE HILL & VALLEY FARM. For a period
>
> of 30 years to GENE RAY NICHOLS for the sum of .00
> To keep ourpart of horses (given to him) and his
> horses going. To reach as far as he can reach.
> Lord Willing, if and when anything happens to us.
>
> They will be taken care of. Then farm be divided up, as
> stated in Sept. Will. 2000
> Take care of them

On October 4, 2006 a petition to sell real estate was filed by the personal representative in James Robert's estate. Gene Nichols filed an objection to the sale alleging that he had a valid lease. Hearing was held on January 5, 2007 and the court granted the petition to sell and determined that Gene held no valid lease.

At the hearing Gene admitted that the first time he saw or knew of the purported lease was when he found it in his mother's papers during the summer of 2006.

This appeal followed the denial of Gene's motion to correct errors.

On appeal Gene argues that the evidence demonstrated that he accepted the offer to lease, either by caring for the horses or by tendering the nominal consideration of one dollar prior to any withdrawal of the offer.

The estate contends the appeal is frivolous and seeks costs and attorney fees.

A lease is, after all, a form of contract. It is subject to the rules of contract law, which require that there be an offer, an acceptance and consideration. *See, DiMizio v. Roma,* 756 N.E.2d 1018, 1022 (Ind. Ct. App. 2001).

The flaw in Gene's argument is that no offer was ever made, either during his father's lifetime or thereafter. Admittedly, he had no knowledge of the purported lease or its contents until he was going through his mother's papers six years after the date on the paper and two years after his father died.

But the document was not an offer unless and until it was communicated by the offeror to the offeree. The intent relevant in contract matters is not the parties' subjective intents but their *outward manifestation of it. Centennial Mortgage, Inc. v. Blumenfeld,* 745 N.E.2d 268, 277 (Ind. Ct. App. 2001) (Our emphasis).

Thus, in *Zimmerman v. McColley,* 826 N.E.2d 71, 77 (Ind. Ct. App. 2005), citing the Restatement 2d of Contracts, the court determined "An offer is defined as 'the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.'"

In the instant case that manifestation never occurred. Indeed, the facts that Gene found the paper among his mother's personal papers some six years after its date and that he had no prior knowledge of any such offer is circumstantial evidence that for some reason his parents decided to not make the offer.

Because no offer was ever made there was simply nothing for Gene to accept. The court did not err in determining there was no lease.[1]

Finally, we turn to the estate's claim that the appeal is frivolous and it should be awarded attorney's fees.

Five of the six contentions raised do not relate to the matters before us in this appeal. As to the sixth we agree that bringing the appeal was ill advised, but we are unwilling to say that it was frivolous. We therefore deny the request for attorney fees.

Affirmed. Costs taxed to appellant.

FRIEDLANDER, J., and BARNES, J., concur.

[1] The court also determined that the instrument did not constitute a will, and that determination was not appealed.